

**ANNOUNCING:** Retirement celebration for Daniel R. Twichell, Duane R. Breitling and John P. Dosland on Thursday, October 19, 2006, at 5:30 p.m., at the Fargo Holiday Inn. There will be a short program at 6:30 p.m. Please join us in honoring our three colleagues who have worked a combined total of 145 years in law practice!!!

## INTERIM DEVELOPMENT CONTROLS IN NORTH DAKOTA



**John T. Shockley**  
*works in the West  
Fargo office and  
devotes his practice  
to municipal law.*

With the recent housing boom, many North Dakota communities and their planning departments are confronted with the problem of how to manage new residential and commercial developments. Many communities are faced with regulating new growth through zoning laws that were enacted during time periods in which growth was limited and in which federal and state environmental regulations were not as extensive. Thus, when developers bring forward plans for new housing, or commercial or industrial development, these communities are faced with the dual task of amending their zoning ordinances to address the need to conform with state and federal law while at the same time working with the developer to ensure the new development is realized.

Interim development controls are resolutions or ordinances passed by local governing authorities that temporarily freeze development for a specified period of time. During this time the community can develop zoning regulations that address the needs of the new development while complying with a host of state and federal laws and regulations or to develop a comprehensive plan to deal with the new growth. Interim development controls often take the form of a moratorium on the

issuance of building permits during the time the community leaders and planners work to develop land use regulations.

At first blush, the act of temporarily suspending the issuance of building permits appears to be a sound and practical way for a community to deal with the problem of new growth. However, the inability to obtain a building permit prevents developers from starting construction and proceeding with their developments. In response to the imposition of a moratorium on the issuance of housing permits, developers may bring suit against communities alleging that such action constitutes a "taking." A "taking" generally occurs when a political subdivision physically takes property for a public purpose such as the construction of a road. However, a taking can also occur when an ordinance or regulation deprives landowners the use of their entire property.

In the early days of zoning, the United States Supreme Court provided a less than crystal clear definition of when a government regulation, such as a moratorium on building permits, constituted a "taking." The court wrote that, "while property may be regulated to a certain extent, if a regulation goes too far it will be recognized as a taking."<sup>1</sup> Recently, the United States Supreme Court addressed the issue of whether or not a moratorium on the issuance of building permits went so far as to constitute a taking. The United States Supreme Court has held that even a long lived development moratorium on the issuance of building permits does not go so far as to constitute a taking.<sup>2</sup>

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*A legal  
newsletter from  
Ohnstad Twichell, P.C.,  
with offices in  
West Fargo,  
Fargo, Hillsboro,  
Mayville, Page,  
Hope and Finley,  
North Dakota.*

*What constitutes a “taking” under either the federal or state constitution?*

Recently the North Dakota Supreme Court was faced with the issue of whether or not a 21-month moratorium on building permits constituted a taking under the North Dakota state constitution and the United States Constitution. Relying heavily on U.S. Supreme Court precedent, the North Dakota Supreme Court held that a 21-month moratorium on building permits did not constitute a taking under either the federal or state constitution.<sup>3</sup>

In light of the decisions by the United States Supreme Court and the North Dakota Supreme Court, communities considering passing a moratorium on building permits to control growth should follow the following guidelines:

- Moratoriums on building permits should be utilized to maintain the status quo of development in the community while the local government studies the impact of the development and the need for new zoning ordinances.
- Moratoriums on building permits should last for approximately one year. Although the United States Supreme Court has upheld a 32-month moratorium and the North Dakota Supreme Court has upheld an 18-month moratorium on building permits, moratoriums that last for more than one year may be more closely scrutinized by a court when challenged by a developer.
- Moratoriums are temporary in nature and any attempt to enact an ordinance that permanently deprives landowners of the ability to obtain a building permit may be viewed as a taking by a court.
- The areas in which a local community is considering imposing a building permit moratorium should be studied to determine how severe the imposition of the moratorium will be on the landowners. If the moratorium will have a severe impact on the landowner, the community may want to consider other methods of controlling growth. A severe impact must amount to a nearly complete reduction in the value of the landowner’s property.

- Local community planners should study the potential impacts of a proposed moratorium on property values during the imposition of such a moratorium following the lifting of the moratorium. If the moratorium merely results in a fluctuation of the value of the property during the course of the moratorium’s existence, it will not be viewed as a taking.
- Local officials should enact the moratorium as part of an overall effort to address zoning issues arising from all new development and should avoid the appearance that the moratorium is only being created to prevent development.

Interim development controls present communities with an effective way of managing new growth while developing land use ordinances that effectively deal with federal and state laws. If communities take time to consider the above guidelines and to give an opportunity for developers to provide input, a community’s chances of avoiding a challenge to a moratorium as a taking will be minimized. If you have any questions about moratoriums on building permits or zoning laws, please feel free to contact your Ohnstad Twichell attorney.

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<sup>1</sup>Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1922).  
<sup>2</sup>Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 122 S. Ct. 1465 (2002).  
<sup>3</sup>Wild Rice River Estates, Inc. v. City of Fargo, 705 N.W. 2d 850, 2005 ND 193 (N.D. 2005).

**PROFILE OF  
ATTORNEY JOHN T. SHOCKLEY**

The law firm of Ohnstad Twichell, P.C., is pleased to announce that John T. Shockley has recently been appointed the City Attorney for the City of Barnesville, Minnesota, and also the Assistant City Attorney for the City of West Fargo, North Dakota.

John T. Shockley joined the firm in August 2005 as an associate attorney. He attended the University of North Dakota, and graduated summa cum laude with a Bachelor of Arts degree in 2002, majoring in political science and minoring in history. While attending the University of North Dakota, he was selected as an intern for the Grand Forks/East Grand Forks Municipal Planning Organization.

In 2002 John and his wife moved to New Orleans, Louisiana, where he attended Tulane Law School. John graduated from Tulane Law School in 2005. While in law school, he was a managing editor of the *Tulane Maritime Law Journal*, an internationally recognized law journal, and was an active member in numerous organizations including the Public Law Foundation, an organization dedicated to providing legal services to all individuals. During law school, John worked for the Federal Public Defender for the Eastern District of Louisiana.

John practices in the West Fargo office and is licensed in North Dakota and Minnesota. He maintains a general practice of law, but will concentrate his practice in municipal law.

John and his wife reside in Mapleton, North Dakota.

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**PROFILE OF  
ATTORNEY ERIN A. MULDOON**



**Erin A. Muldoon**  
*works in the West Fargo office and devotes her practice to family law and real estate law.*

Erin A. Muldoon joined the Ohnstad Twichell law firm on July 19, 2006.

Ms. Muldoon was raised in Red Lake Falls, Minnesota. She earned her undergraduate degree from Concordia College, Moorhead, Minnesota, where she majored in business administration and office administration. Erin received her law degree from the University of North Dakota School of Law in 2004.

After completing law school, she worked for two years in private practice in East Grand Forks, Minnesota. She was the Assistant City Prosecutor for East Grand Forks and practiced in the areas of family law and real estate law.

Erin practices in the West Fargo office, and she is licensed to practice in both North Dakota and Minnesota. She will maintain a general practice of law, but will concentrate in the areas of family law and real estate law.

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**GETTING PERSONAL!!**

Karla J. Turner began working for Ohnstad Twichell, P.C., as a bookkeeper in July 2005. She graduated from Moorhead State University, receiving a Bachelor of Science degree in accounting. Previously, she worked in accounting at Corporate Technologies for ten years and at Corwin C-P-D for seven years. Karla spends her free time walking, reading, and driving her children to practices. Karla resides in West Fargo with her daughter and son.

Dena Ranum began working at Ohnstad Twichell, P.C., on May 15, 2006, as a legal secretary. She works in the litigation department primarily in family law. Dena graduated from Interstate Business College in 1995 with an associate degree in legal assistant. Her previous work experience includes six years as a legal assistant with Gjesdahl & Deitz in Fargo. Dena and her husband, Chris, have three children and live in southwest Fargo.

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**NEWS FROM OHNSTAD TWICHELL**

Carol Stillwell is Chair of the Board for the West Fargo Chamber.

Dawn Schaefer, PLS, recently received the local 2006 Award of Excellence through NALS of Fargo-Moorhead, a professional association.

Dawn Schaefer, PLS, is NALS Liaison/Parliamentarian with NALS of Fargo-Moorhead, a professional association.

*You Are Invited...*

*Retirement Party*

*October 19, 2006,*

*Fargo Holiday Inn*

*5:30 p.m.*



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OFFICE ADMINISTRATOR & EDITOR  
PEG BUCHHOLZ, PLS

*You Are Invited...*



Congratulations to Daniel Twichell, Duane Breitling and Peter Dosland for practicing law for over 145 years!!! They will all be honored at a retirement party on Thursday, October 19, 2006, at a 5:30 p.m., social at the Holiday Inn in Fargo. A short program will follow at approximately 6:30 p.m. Please join us in wishing them a happy retirement!

**NEWS FROM OHNSTAD TWICHELL, P.C.** (Continued from page 3)

Susan Ellison was recently appointed to the West Fargo Library Board of Directors. She is also Chair of the Faith Lutheran Church Foundation.

Bill Brudvik was endorsed by the Democratic party to run for North Dakota Attorney General.

Sara Sorenson is the Financial Vice-President of Junior League of Fargo-Moorhead for 2006.

Marshall McCullough is presently the President of the Red River Valley Estate Planning Council.

John Shockley has been named a campaign coordinator for the United Way of Cass-Clay for 2006.

Julie Koppelman is co-chair of the Youth Leadership program with the Fargo-Moorhead Chamber of Commerce for the second year.

Chantal and her husband, Justin, welcomed daughter Emily Rose Stennerson to their family. She was born on February 14, 2006, and weighed 7 lbs., 11 oz., and was 19 3/4" in length. Chantal is a probate paralegal and has been working at Ohnstad Twichell since January 2005.

Julie Koppelman and her husband, Ben, welcomed their son, Reagan James Koppelman, on August 10, 2006, four weeks before his due date. He weighed in at 5 lbs 15 oz. and was 18 1/4 inches long. Reagan joins his parents and older sister, Madison, at home in Horace. Julie has been with the firm almost five years working as a probate paralegal. Julie and her family would like to thank her co-workers and clients for their prayers and support and are pleased to have a healthy baby boy joining their family.

The information provided in this letter is of a general nature and should not be acted upon without prior discussion with your Ohnstad Twichell, P.C., attorney.

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